

ERIC E. WIELER, ET AL.

IBLA 2002-28

Decided January 20, 2004

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claim null and void when an answer to a contest complaint, AA 82877, was not timely received.

Affirmed.

1. Mining Claims: Contests--Rules of Practice: Government Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of inadvertence and excusable neglect.

APPEARANCES: Eric E. Wieler, Paul R. Wieler, Gold King Mines, Inc., and Eric Todd Wieler, Anchorage, Alaska, pro se.^{1/}

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Eric E. Wieler, Paul R. Wieler, Gold King Mines, Inc., and Eric Todd Wieler, have appealed from an August 6, 2001, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Silver King #16 - #18 lode mining claims, F-61229 through F-61231, null and void when an answer to contest complaint AA 82877 was not timely received.

^{1/} Counsel for appellants filed a notice of appeal but withdrew from these proceedings shortly thereafter.

The subject mining claims are situated within the Denali National Park and Preserve. On February 17, 1999, the U.S. National Park Service (NPS) completed a mineral report on the claims, concluding that there is insufficient quality or quantity of minerals to constitute a valid discovery within the confines of the claims. NPS recommended that a contest action against the claims be initiated by BLM. A contest complaint, AA 82877, was issued to the several co-claimants on June 21, 2001. The complaint charged that

[t]here are not presently disclosed within the boundaries of the Silver King #16, Silver King #17, and Silver King #18 lode mining claims minerals of a variety subject to the mining laws sufficient in quantity and quality to constitute a valid discovery and none were disclosed on March 15, 1972, when Public Land Order No. 5179 withdrew the lands from location and entry under the mining laws.

The record shows that the four appellants here were served with the complaint on June 23, 2001. Another claimant, William M. Barstow, Trustee for the Bankruptcy Estate of Gold King Mines, Inc., was served with the complaint on June 25, 2001, but did not appeal. A copy of the complaint sent to Kenneth W. Battley, Trustee for the Bankruptcy Estate of Eric E. Wieler and Paul R. Wieler, was returned with a notation, "6/26/01 - Did Not Accept Service. This is a closed No-Asset Ch. 7 bankruptcy case."

A "Motion for an Enlargement of Time to File Answer" was received by BLM from the four appellants here on July 27, 2001, 34 days after they each had been served with the complaint. The Motion had been signed and dated July 27, 2001.^{2/}

Citing the regulations regarding the filing of contest answers within 30 days, 43 CFR 4.450-6, BLM determined that the motion was received after this period and therefore was untimely. Then citing the regulations at 43 CFR 4.450-7, BLM held that the charges contained in the complaint are taken as confessed and concluded that the subject mining claims are null and void.^{3/}

^{2/} Departmental regulation 43 CFR 4.401(a) outlines a 10-day grace period for filing, provided the document was "probably transmitted" before the end of the filing period. As this document was delivered the day it was prepared, the grace period does not apply.

^{3/} Government contest complaints are governed by the procedures applicable to private complaints, including those at 43 CFR 4.450-6 and 4.450-7. See 43 CFR 4.451.2.

In the notice of appeal, counsel for appellants avers that the failure to respond within 30 days “was due to simple mistake, inadvertence, and excusable neglect” on her part.^{4/} She claims that she failed to correctly calculate the date by which the answer was to be filed, explaining that she had recently been retained by appellants and was not served with the original complaint. Counsel cites the Federal Rules of Civil Procedure, Rule 60(b)(1), as allowing for relief from a “default judgment” due to mistake, inadvertence, surprise, or excusable neglect. Counsel argues that BLM has not been prejudiced by the untimely filing.

[1] Departmental regulation 43 CFR 4.450-6 specifically requires that answers to contest complaints must be filed within 30 days of receipt of the complaint. This Board has held on numerous occasions that this regulation is mandatory in nature and jurisdictional in character, and therefore a failure to timely file may not be waived. *E.g.*, Robert W. Gossum, 158 IBLA 1, 2 (2002); United States v. Grooms, 146 IBLA 289, 292 (1998); Robert D. McGoldrick, 115 IBLA 242, 245 (1990); United States v. Soren, 47 IBLA 226, 227 (1980); United States v. McCormick, 5 IBLA 382, 79 I.D. 155 (1972); United States v. Sainberg, 5 IBLA 270, 272-274 (1972), *aff'd*, Sainberg v. Morton, 363 F. Supp. 1259, 1263 (D. Ariz. 1973) (may not be excused, even where the answer is filed 1 day late). Accordingly, both the Board and BLM are without authority to waive the rules and permit the late filing. United States v. Grooms, *supra*.

Both the contest complaint and the applicable regulation, 43 CFR 4.450-7(a), expressly advised claimants that the allegations of the complaint would be taken as admitted and the case would be decided without a hearing if an answer were not filed within 30 days as required. Appellants clearly failed to timely file an answer to the contest complaint, thus, the allegations made therein must be taken as admitted. *E.g.*, Robert W. Gossum, *supra*; United States v. Grooms, *supra*; Robert D. McGoldrick, *supra*. Accordingly, BLM properly declared the claims null and void.

^{4/} BLM has filed a Motion to Dismiss Appeal on the grounds that appellants failed to file a statement of reasons pursuant to 43 CFR 4.412(a). As the notice of appeal did set forth specific reason for appeal, we are not persuaded to dismiss the appeal and BLM’s motion is therefore denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge